



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

SEP 21 2000

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

David B. Siegel, Esq.
Senior Vice President and General Counsel
W.R. Grace & Co.
7500 Grace Drive
Columbia, MD 21044

Dear Mr. Siegel:

On September 8, Peter Robertson and Parker Brugge of Patton Boggs hand-delivered to me your September 1 letter. At that time, they met with me, as well as with Barry Breen and Victoria van Roden of my office and Matthew Cohn by telephone from Denver. In your letter, you allege that Mr. Cohn, an enforcement attorney in Region VIII of the Environmental Protection Agency ("EPA"), was unfairly partial to a party in private litigation with W.R. Grace by providing that party publicly available information that was already in W.R. Grace's possession.

Unfortunately, your letter has little in the way of specific facts, other than attaching a fax sent from Mr. Cohn. I asked my staff for additional specifics. I am told the facts are as follows. Mr. Cohn received an oral and written request from plaintiff's counsel, Robert Turkewitz, to send a copy of a memorandum and data concerning contaminated documents to his paralegal, Jill Coffin. Mr. Cohn provided the information requested. The documents represent information which was provided to W.R. Grace in a letter to Mr. Kenneth Lund in April 2000. A copy of that letter is attached. This same information resides in the administrative record for the Libby Asbestos Site, which W.R. Grace received on August 3, 2000. While the information in the record and that provided to Mr. Turkewitz are in a different format, the actual substantive information is the same. Moreover, the document provided to Mr. Turkewitz is, and has always been, a publicly available document.

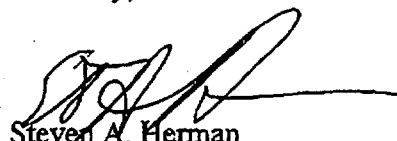
EPA policy relevant to this issue is set out at 40 CFR 2.101. It provides that EPA policy is one of providing "the fullest possible disclosure of records to the public," consistent with certain privileges. Pursuant to that policy, EPA and many other Federal agencies regularly respond to informal requests for a few pages of information by providing the information quickly. This is particularly the case where, as here, the information is in the public record.

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Moreover, the Freedom of Information Act is always available for requests that cannot be handled as quickly, such as for larger volumes of material or where there is doubt regarding whether the information requested is in the public record.

In considering the facts, and in light of the benefits of open access to information regarding public health and the environment, of which both plaintiff and defense counsel may avail themselves, I can only conclude that Mr. Cohn acted properly in this matter.

Sincerely,



Steven A. Herman
Assistant Administrator

Enclosure

cc: Peter Robertson
Parker Brugge